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OLC #78-1857

14 February 1978

To: DDCI *(initials)*

FOIA

I hope this background paper on FOIA
and issues it presents is responsive to the
interest you expressed at this morning's
meeting.



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FREEDOM OF INFORMATION ACT

- I. The amendments to the Freedom of Information Act have had a considerable impact on the Agency.

A. Administrative Burden and Costs

The publicity given to the amendments prompted a deluge of requests. To date, over 16,000 requests have been submitted; 2,400 initial requests pending and approximately 250 appeals pending. The equivalent of 100 man-years are needed for processing requests at a per year cost of \$2,375,000. This figure covers only salaries. The Agency can only charge requesters for search time which may be waived if the request is in the public interest. There is considerable review time expended by senior officials up and down the line for which there is no compensation.

B. Scope of Requests

Requesters need only reasonably identify broad subject matters rather than specific documents. This has led to requests such as "Give me all you have on the Berlin Tunnel," which involves a review of 1,700 linear feet of documents.

C. Requesters

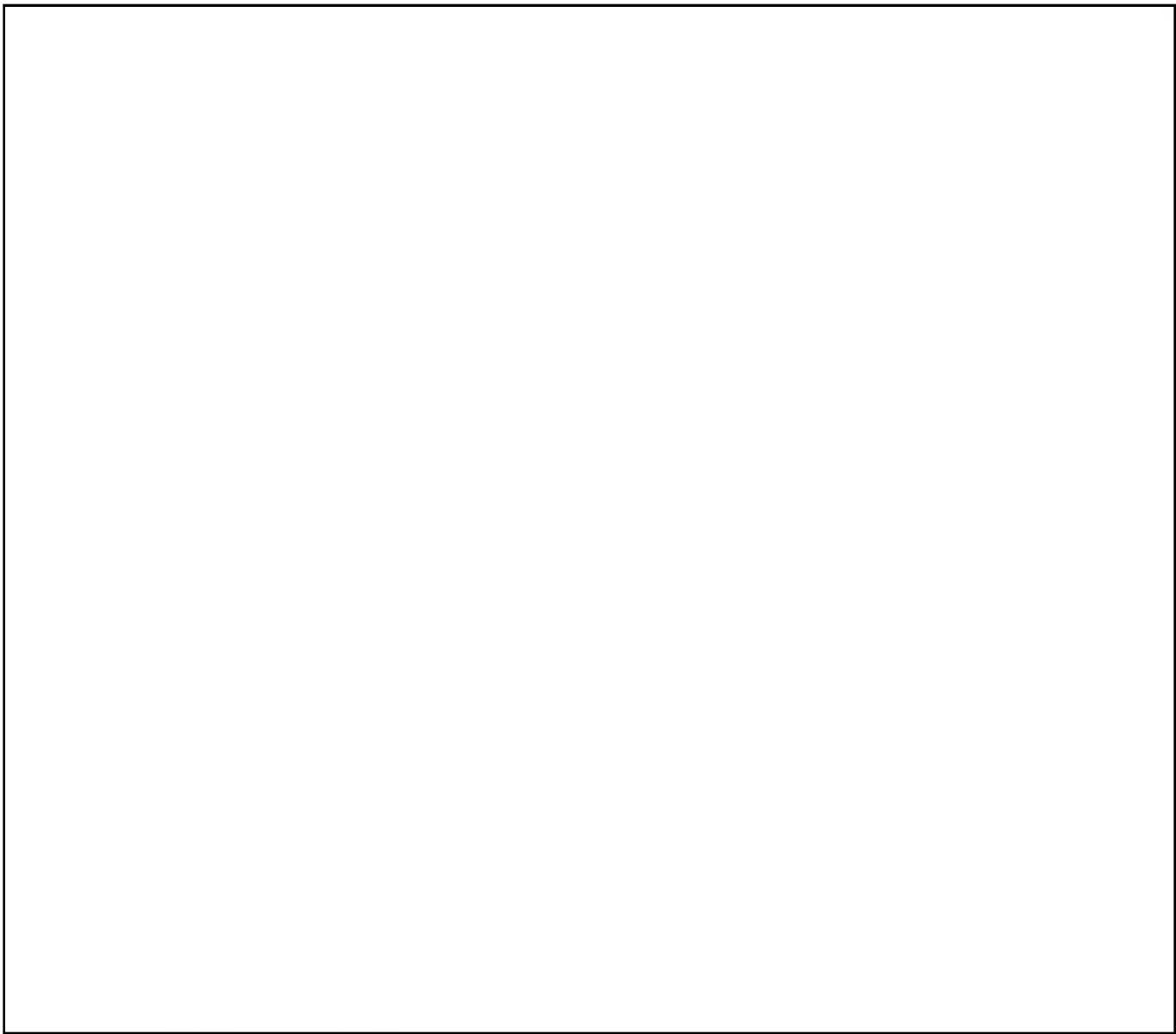
Any person, regardless of citizenship, residing anywhere in the world can submit a request. Requests from foreign organizations are increasing and CIA could eventually become a world information bureau at the expense of the U.S. taxpayer.

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F. Congressional Documents

Though the Congress is not subject to FOIA, congressional documents such as executive session transcripts and other memoranda noting confidential conversations which are in Agency files, come within the scope of a FOIA request. Though the Agency refuses to provide

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the documents, they must be identified to the requester and can be subject to litigation. This issue is now before the courts in the Goland case.

II. What Action Has the Agency Taken?

A. In Congress: In 1975, the amendments passed the House without any opportunity for agencies to comment. However, due to major efforts of CIA and Justice Department, the Judiciary Committee reported out an amendment establishing a court procedure for judges to adjudicate cases on the basis of an affidavit by the agency head that the documents requested required protection under Executive Order or law. Regretfully, due to the emotionalism of the FOIA issue, the amendment was stricken in debate on the Senate floor. CIA continued to press its position and did secure language in the Conference Report on the amendments which recognized the sensitivity of intelligence sources and methods under exemption (b)(3). This was of extreme importance subsequently, when CIA cases were litigated. When the bill passed the Congress, the Agency took a firm lead with the White House and played a critical role in President Ford's veto. Again, emotionalism carried and the Congress overwhelmingly overrode the President's veto.

B. CIA continually addresses its problems to the Congress in the Agency's annual reports on the implementation of the Act.

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Also, letters were sent to the Chairmen of the Senate and House Armed Services Committees, who then had major oversight of CIA, and to Representative John Ashbrook who had inquired as to any problems we faced. Mr. Ashbrook is now a member of the House Permanent Select Committee on Intelligence.

III. Why Have There Not Been Remedial Amendments to FOIA In View of the Serious Problems ?

A. Positions of Administrations

OMB, under the Ford Administration, advised the Agency that after the amendments became law, it would be impractical to seek remedial amendments until agencies had lived under the amendments and could make solid cases for changes. The present Administration has not yet focused on Executive Branch problems, rather, OMB comments in connection with our letter to Representative Samuel Devine, which is still at OMB for clearance, clearly indicate that the Administration is at this time willing to act only if major problems exist government-wide. Our only surmise is that other agencies and departments have not been that convincing in stating their problems to OMB.

B. Amendments Considered by the Congress

The principal moving committee for remedial amendments in the Congress is the House Government Operations Subcommittee on Government Information and Individual Rights. The Staff Director, in a

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recent discussion with our staff, informed us that he is aware of the problems which agencies and departments are facing. He emphasized that it would be impolitic for the Committee to consider introducing any remedial legislation in this session of Congress as it is too soon. The Committee, however, is aware of the problems and would consider hearings on remedial legislation in the 96th Congress.

IV. Proposed Action By CIA

A. Should the Agency Seek a Full Exemption?

Regretfully, the investigations and disclosures exposing questionable past practices of the Agency created serious doubts as to CIA's credibility. The FOIA has served to force public disclosure of voluminous material associated with these past practices. Until credibility in the Agency is fully restored, any attempts for full exemption would undoubtedly meet stiff congressional opposition. We would need strong support from both House and Senate Select Intelligence Committees to get an exemption. It is most noteworthy that when the Privacy Act was enacted, which preceded the clamor associated with the disclosures, the Congress recognized the sensitive mission of the Agency and granted the Director an exemption from the provisions of the Act which the Director, in his discretion, could exercise. Former Director Colby however, recognizing the issue of credibility, did not exercise the exemption and instituted a positive program to process all requests from private citizens under the Act.

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B. Should the Agency Seek Remedial Amendments?

There is positive support within influential congressional circles to sponsor remedial legislation for CIA and other agencies. We should take the initiative and address our problems to the House and Senate Select Committees on Intelligence seeking specific amendments to:

1. Grant the DCI discretion to exclude categories of sensitive Agency information such as cable traffic from overseas stations and bases, documents involving relationships with foreign liaison services and reports of the Inspector General;
2. Stress the mutual problem that we and the Select Committees both face due to their documents being subject to FOIA and propose an amendment to exclude providing congressional documents or material without the express approval of the congressional office of interest.
3. Allow a reasonable amount of time to process requests taking into consideration the volume of documents to be reviewed;
4. Deny requests unless a clear public interest is shown;
5. Require requesters to define the specifics of their request.

C. Other Suggested Action

In addition, the Agency should stress the impact on the Agency's financial and manpower assets. All administrative costs

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and other burdens have been absorbed within the Agency's budget. This drain, however, is becoming increasingly significant and the Agency must seek a line item appropriation for additional funds as this absorption cannot be sustained indefinitely.

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